

## SENATE BILL NO. 108

INTRODUCED BY E. FRANKLIN

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "MENTAL HEALTH PROFESSIONAL" AND "PROFESSIONAL PERSON" TO INCLUDE ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING; PROVIDING THAT ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING HAVE RIGHTS REGARDING MEDICATION IN MENTAL HEALTH FACILITIES; AND AMENDING SECTIONS 27-1-1101, 53-21-102, 53-21-145, AND 53-21-165, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**SECTION 1. SECTION 27-1-1101, MCA, IS AMENDED TO READ:**

**"27-1-1101. Definition.** As used in this part, "mental health professional" means:

- (1) a certified professional person as defined in 53-21-106;
- (2) a physician licensed under Title 37, chapter 3;
- (3) a professional counselor licensed under Title 37, chapter 23;
- (4) a psychologist licensed under Title 37, chapter 17; ~~or~~
- (5) a social worker licensed under Title 37, chapter 22; or
- (6) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing."

**Section 2.** Section 53-21-102, MCA, is amended to read:

**"53-21-102. Definitions.** As used in this part, the following definitions apply:

- (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.
- (2) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.
- (3) "Court" means any district court of the state of Montana.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(6) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(7) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol;

(b) drug or alcohol intoxication;

(c) mental retardation; or

(d) epilepsy.

(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; ~~or~~

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(15) "State hospital" means the Montana state hospital."

**Section 3.** Section 53-21-145, MCA, is amended to read:

**"53-21-145. Right to be free from unnecessary or excessive medication.** Patients have a right to be free from unnecessary or excessive medication. A medication may not be administered unless at the written order of a physician or advanced practice registered nurse WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING. The attending physician or advanced practice registered nurse WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING is responsible for all medication given or administered to a patient. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in the individual's medical records. The department of public health and human services shall adopt rules governing attending physician or advanced practice registered nurse WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING review of the drug regimen of each patient under the physician's or the advanced practice registered nurse's care in a mental health facility, except that the drug regimen of inpatients in hospitals must be reviewed no less than weekly. Except in the case of outpatients, all prescriptions must be written with a termination date, which may not exceed 30 days. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program."

**Section 4.** Section 53-21-165, MCA, is amended to read:

**"53-21-165. Records to be maintained.** Complete patient records must be kept by the mental

1 health facility for the length of time required by rules established by the department of ~~public health and~~  
2 ~~human services~~. All records kept by the mental health facility must be available to any person authorized  
3 by the patient in writing to receive these records and upon approval of the authorization by the board. The  
4 records must also be made available to any attorney charged with representing the patient or any  
5 professional person charged with evaluating or treating the patient. These records must include:

6 (1) identification data, including the patient's legal status;

7 (2) a patient history, including but not limited to:

8 (a) family data, educational background, and employment record;

9 (b) prior medical history, both physical and mental, including prior hospitalization;

10 (3) the chief complaints of the patient and the chief complaints of others regarding the patient;

11 (4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes,  
12 behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the  
13 patient's assets in descriptive rather than interpretative fashion;

14 (5) a summary of each physical examination that describes the results of the examination;

15 (6) a copy of the individual treatment plan and any modifications to the plan;

16 (7) a detailed summary of the findings made by the reviewing professional person after each  
17 periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and  
18 failures of the treatment program and includes recommendations for appropriate modification of the  
19 treatment plan;

20 (8) a copy of the individualized discharge plan and any modifications to the plan and a summary  
21 of the steps that have been taken to implement that plan;

22 (9) a medication history and status that includes the signed orders of the prescribing physician or  
23 advanced practice registered nurse. The staff person administering the medication shall indicate by  
24 signature that orders have been carried out.

25 (10) a summary of each significant contact by a professional person with the patient;

26 (11) documentation of the implementation of the treatment plan;

27 (12) documentation of all treatment provided to the patient;

28 (13) chronological documentation of the patient's clinical course;

29 (14) descriptions of any changes in the patient's condition;

30 (15) a signed order by a professional person for any restrictions on visitations and

1 communications;

2 (16) a signed order by a professional person for any physical restraints and isolation;

3 (17) a detailed summary of any extraordinary incident in the facility involving the patient, to be  
4 entered by a staff member noting that the staff member has personal knowledge of the incident or  
5 specifying any other source of information. The summary of the incident must be initialed within 24 hours  
6 by a professional person.

7 (18) a summary by the professional person in charge of the facility or by an appointed agent of  
8 the determination made after the 30-day review provided for in 53-21-163."

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